

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

TODD J HANUS
Claimant

APPEAL NO. 10A-UI-15611-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

VAN GORP CORPORATION
Employer

OC: 05/16/10
Claimant: Appellant (2)

Section 96.5-2-A – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated November 1, 2010, reference 07, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on January 6, 2011. Claimant participated. Employer participated by Kendall Colvin, Plant Manager, and Dorsha Moyer, Production Supervisor. The record consists of the testimony of Kendall Colvin; the testimony of Dorsha Moyer; the testimony of Todd Hanus; and Employer's Exhibit 1.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer manufactures conveyer pulleys for flat belt conveyers. The employer has a production facility in Pella, Iowa, which is where the claimant worked. He was a "roller" and was a full-time employee. His last day of work was September 27, 2010. He was terminated on September 27, 2010.

The incident that led to the claimant's termination occurred on September 23, 2010. The claimant smashed two fingers on his hand while at work at approximately 7:10 a.m. He felt light headed and nauseous and decided to go outside and get some cool air. He sat down on some steps. He believes that he may have passed out and the next thing he remembers is being in the first aid room. He does not know how he got there. Approximately 1½ hours passed between the time he left his workstation and when he was found in the first aid room.

His supervisor, Dorsha Moyer, found the claimant in the first aid room. She asked him where he at been and he admitted that he had gone outside for some cool air. The employer has a policy that all on the job injuries were to be reported immediately. The claimant was given a written warning. The employer reviewed the matter in conjunction with the claimant's work performance and decided to terminate the claimant.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Unsatisfactory job performance is not misconduct unless there are instances of carelessness and negligence that amount to an intentional and substantial disregard of the employer's interests. The employer has the burden of proof to show misconduct.

There is insufficient evidence in this record to show work-related misconduct. The claimant did violate the employer's policy on reporting work-related injuries. The claimant smashed two fingers and as a result felt light headed and nauseous. He decided to go outside in the cool air. He believes he may have passed out. He does not recall how long he was out or how he got to the first aid room. He was away from his workstation for approximately 1½ hours and the employer was understandably concerned. Under these circumstances the administrative law judge cannot find a deliberate attempt on the part of the claimant to breach a duty to his employer.

The greater weight of the evidence is that the claimant's job performance was not satisfactory and that the quality of his work did not meet the employer's expectations. The employer felt that the claimant was not a good fit for the company and decided to terminate him. The employer may have had good business reasons for terminating the claimant. Those business reasons alone do not disqualify the claimant from receiving unemployment insurance benefits. The employer did not provide sufficient evidence to show disqualifying misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated November 1, 2010, reference 07, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css